



# **MOUNT SOLEDAD CROSS CURRENT ISSUES**

San Diego City Attorney  
Community Forum

March 23, 2005

# **FEDERAL COURT RULES SALE OF CROSS UNCONSTITUTIONAL**

- “The second sale of the Mt. Soledad land on which the cross stands was structured to provide a direct, immediate, and substantial financial advantage to bidders who had the sectarian purpose of preserving the cross. For that reason, the sale violated article XVI, section 5, of the California Constitution.”

*Paulson v. City of San Diego*, 9<sup>th</sup> Circuit *en banc* Ruling, June 26, 2002



# **FEDERAL COURT LEAVES IT TO PARTIES TO CURE VIOLATION**

“No doubt there are several possible ways to cure this violation. We leave it to the parties and to the district court, in the first instance, to devise a remedy for the constitutional violation . . . .”

*Paulson v. City of San Diego*, 9<sup>th</sup> Circuit *en banc* Ruling, June 26, 2002

# **CITY COUNCIL AGREES TO SETTLE IF PROP K FAILS**

- “Should voters reject the proposal [Proposition K], City Attorney shall enter into the settlement agreement now with Mt. Soledad Memorial Association and Plaintiffs.”
- Yea Votes: Councilmembers Lewis, Peters, Maienschein, and Madaffer and Mayor Murphy
- Nay Votes: Councilmembers Zucchet, Frye, and Inzunza.
- Not Present: Atkins

Council Minutes: July 27, 2004



# **VOTERS REJECT PROP K**

Proposition K: City of San Diego  
Authorized to Sell Portion of  
Mount Soledad Natural Park

No	256,745	59.18%
Yes	177,062	40.82%

General Election: November 2, 2004 Vote

# **CITY COUNCIL REJECTS TRANSFER TO FEDERAL GOVERNMENT**

Decline the Offer of the Federal Government  
to Transfer the Mount Soledad Cross

- Yea Votes: Councilmembers Peters, Zucchet, Atkins, Frye, and Inzunza
- Nay Votes: Councilmembers Maienschein and Madaffer and Mayor Murphy
- Not Present: Young

Council Minutes: March 8, 2005



# VOTERS' RIGHT TO REFERENDUM

- Enacting the law by referendum may not cure the Constitutional defect.
- “It is irrelevant that the voters rather than a legislative body enacted this law because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation.”

*Citizens Against Rent Control/Coalition for Fair Housing v City of Berkeley*,  
454 U.S. 290 (1981)

# REFERENDUM PASSES

Litigation would cost taxpayers.





# **PANEL MEMBERS**

- Joseph J. Darby, Retired Professor of Law, USD
- Marilyn Ireland, Professor of Constitutional Law, California Western School of Law
- Charles LiMandri, Attorney, Thomas More Society
- Jim McElroy, Attorney for Plaintiff Philip Paulson
- Brian Wildenthal, Professor of Constitutional Law, Thomas Jefferson School of Law
- Pete Lepiscopo, Pacific Justice Institute

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